

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

DIRECTOR, DEPARTMENT OF LABOR
AND INDUSTRIAL RELATIONS,

Complainant,

and

HAWAIIAN ELECTRIC COMPANY, INC.,

Respondent.

CASE NO. OSH 2010-18

ORDER NO. 452

PRETRIAL ORDER

PRETRIAL ORDER

Pursuant to the initial conference/settlement conference in this matter held by the Hawaii Labor Relations Board (Board) on October 3, 2011 and attended by Herbert B.K. Lau, Deputy Attorney General, for Complainant DIRECTOR, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS (Complainant), and Lori K.K. Sunakoda, Esq., for Respondent HAWAIIAN ELECTRIC COMPANY, INC. (Respondent), IT IS HEREBY ORDERED THAT:

A. The issues to be determined at trial is:

1. Citation 1, Item 1: Hawaii Administrative Rule (HAR) § 12-60-2(a)(3)

Whether the characterization as “Serious” and the associated penalty of \$5,000 resulting from Citation 1, Item 1, of Inspection No. 313078768, was valid and proper.

Citation 1, Item 1 alleged:

HAR § 12-60-2(a)(3) was violated because:

The employer assigned a crew of four employees to disconnect secondary and primary conductors from I-4A transformer located in V711 Kress No. 2, underground electrical vault which consisted of two

separate compartments. Three employees accidentally (sic) entered into I-3A compartment of V711, which was not de-energized and failed to verify circuit holdoff. Evidences gathered during the accident investigation indicate that:

- There was no marking distinguishing each compartment (e.g. I-3A or I-4A).
- I-3A circuit tag was illegible.
- No switch # was found on the I-3A transformer.
- No transformer # was found on the I-4A transformer.
- The holdoff request #204 and downtown map given to the crew did not include transformer #, switch #, and physical location of I-4A transformer that the crew was supposed to work on.

Failure of the employer to provide clearly marked work place/equipment and appropriately detailed work site information indirectly contributed to the accident which resulted in two employees receiving flash burn type injuries.

2. Citation 1, Item 2a: 29 CFR 1910.269(a)(2)(I)

Whether the characterization as “Serious” and the associated penalty of \$5,000 resulting from Citation 1, Item 2a of Inspection No. 313078768, was valid and proper.

Citation 1, Item 2a alleged:

29 CFR 1910.269(a)(2)(I) was violated because:

The employee interviews indicate that the employees were not properly trained in and familiar with safety-related work practices addressed in the following HECO work procedures:

U-100 Manhole and Handhole Work
U-700 Cable Spearing Guideline

3. Citation 1, Item 2b: 29 CFR 1910.269(a)(2)(iii)

Whether the characterization as “Serious” resulting from Citation 1, Item 2b of Inspection No. 313078768, was valid and proper.

Citation 1, Item 2b alleged:

29 CFR 1910.269(a)(2)(iii) was violated because:

The employer did not determine, through regular supervision and through inspections conducted on at least an annual basis, that each employee was complying with safety related work practices required by this section of the HIOSH standards.

4. Citation 1, Item 2c: 29 CFR 1910.269(a)(2)(iv)(C)

Whether the characterization as “Serious” resulting from Citation 1, Item 2c of Inspection No. 313078768, was valid and proper.

Citation 1, Item 3a alleged:

29 CFR 1910.269(a)(2)(iv)(C) was violated because:

The employees did not receive additional training (or retraining) on spearing underground network cables.

5. Citation 1, Item 2d: 29 CFR 1910.269(a)(2)(vi)

Whether the characterization as “Serious” resulting from Citation 1, Item 2d of Inspection No. 313078768, was valid and proper.

Citation 1, Item 2d alleged:

29 CFR 1910.269(a)(2)(vi) was violated because:

The OJT (on-the-job type) training did not establish employee proficiency in the work practices required by this section of the HIOSH standards. Failure to provide

an effective OJT training program resulted in inconsistent work skills and techniques among the employees.

6. Citation 1, Item 3: 29 CFR 1910.269(c)

Whether the characterization as “Serious” and the associated penalty of \$5,000 resulting from Citation 1, Item 3 of Inspection No. 313078768, was valid and proper.

Citation 1, Item 3 alleged:

29 CFR 1910.269(c) was violated because:

The employer failed to ensure that each job briefing covered HIOSH requirements for the job briefing, such as specific hazards associated with the job, work procedures involved, special precautions, energy source controls, etc. The insufficient job briefing indirectly contributed to the accident which resulted in two employees receiving flash burn type injuries.

7. Citation 2, Item 1: 29 CFR 1910.1025(l)(1)(I)

Whether the characterization as “Other” resulting from Citation 2, Item 1 of Inspection No. 313078768, was valid and proper.

Citation 2, Item 1 alleged:

29 CFR 1910.1025(l)(1)(I) was violated because:

The employees who were exposed to airborne lead while performing lead removal or application were not informed of the contents of Appendices A and B of the HIOSH lead standard.

- B. The deadline for the parties’ final naming of witnesses is **January 9, 2012**. Each party shall provide a list of the names of witnesses it plans to call at trial, along with each witness’s addresses and the general subject to which the witness will testify, to the other party and to the Board by this date.

- C. The parties may engage in discovery without prior motion or showing of good cause. The discovery cutoff date is **February 6, 2012**. The discovery cut-off is the date by which all responses to written discovery, including requests for admissions, shall be due and by which all depositions shall be concluded. The parties are advised to initiate discovery requests and notice depositions sufficiently in advance of the cut-off date to comply with this requirement.
- D. Trial in this matter is scheduled for **March 6-7, 2012 at 9:00 a.m.** in the Board's hearing room located at 830 Punchbowl Street, Room 434, Honolulu, Hawaii, 96813. The trial may be continued by the Board until completed.
- E. Hereafter, this Pretrial Order shall control the course of proceedings and may not be amended except by consent of the parties and the Board, or by order of the Board.

DATED: Honolulu, Hawaii, November 1, 2011.

HAWAII LABOR RELATIONS BOARD



JAMES B. NICHOLSON, Chair



SESNITA A. D. MOEPONO, Member

NOTICE TO EMPLOYER

You are required to post a copy of this Order at or near where citations under the Hawaii Occupational Safety and Health Law are posted at least five working days prior to the trial date. Further, you are required to furnish a copy of this Order to a duly recognized representative of the employees, if any, at least five working days prior to the trial date.

Copies sent to:

Herbert B.K. Lau, Deputy Attorney General
Lori K.K. Sunakoda, Esq.